

A ND HOUSING FOR ALL: OPENING THE DOORS TO INCLUSIVE COMMUNITY PLANNING

RÉSUMÉ

LA RAISON D'ÊTRE ... DEPUIS PRÈS DE 70 ANS, LES MÉTHODES DE PLANIFICATION ET LE ZONAGE D'EXCLUSION ONT EU LIBRE COURS AU CANADA. MAIS LE RECOURS AU CADRE RÉGLEMENTAIRE MUNICIPAL POUR EXCLURE DE NOS QUARTIERS DES GENS DONT LA RACE, LE SEXE, LE MODE D'OCCUPATION DE LEUR LOGEMENT, LE REVENU OU LES APTITUDES SONT DIFFÉRENTS EST UNE ATTEINTE AUX DROITS FONDAMENTAUX DE CES PERSONNES. ALORS QUE LA DEMANDE POUR DES LOGEMENTS À PRIX ABORDABLE SE FAIT DE PLUS EN PLUS PRESSANTE, IL EST IMPÉRATIF DE PRÉVOIR UN PROCESSUS DE PLANIFICATION PLUS INCLUSIF, UN PROCESSUS QUI ORIGINE DE LA COLLECTIVITÉ LOCALE. J. DAVID HULCHANSKI

LES MÉCANISMES ... FACE À L'AUSTÉRITÉ FINANCIÈRE PRÉCONISÉE PAR LES GOUVERNEMENTS FÉDÉRAL ET PROVINCIAUX, LES MUNICIPALITÉS DEVONT EXAMINER DES APPROCHES INNOVATRICES POUR RÉPONDRE À LEURS BESOINS DE LOGEMENTS ABORDABLES. ELLES DEVONT RECOURIR DE PLUS EN PLUS À DES MÉCANISMES RÉGLEMENTAIRES — ET NON À DES FONDS PUBLICS — POUR CANALISER L'ÉNERGIE DU SECTEUR PUBLIC DANS LA PRODUCTION DE LOGEMENTS CONVENABLES ET À PRIX ABORDABLE POUR TOUS ET POUR AINSI SOUSCRIRE AU CONCEPT DE «COLLECTIVITÉS INCLUSIVES». RICHARD DRDLA

SUMMARY

THE RATIONALE ... FOR ALMOST 70 YEARS, EXCLUSIONARY ZONING AND PLANNING PRACTICES HAVE BEEN A WAY OF LIFE IN THIS COUNTRY. BUT USING THE MUNICIPAL REGULATORY ENVIRONMENT TO EXCLUDE PEOPLE OF DIFFERENT RACES, GENDERS, TENURES, INCOMES OR LEVELS OF ABILITY FROM OUR NEIGHBOURHOODS IS A VIOLATION OF THEIR HUMAN RIGHTS. AS OUR DEMAND FOR AFFORDABLE HOUSING CONTINUES TO INCREASE, THE NEED FOR A MORE INCLUSIVE PLANNING PROCESS — ONE THAT OPERATES FROM THE COMMUNITY LEVEL UP — HAS BECOME IMPERATIVE. J. DAVID HULCHANSKI

THE MECHANISMS ... IN THE FACE OF AN EMERGING ERA OF FEDERAL AND PROVINCIAL FISCAL AUSTERITY, MUNICIPALITIES WILL HAVE TO EXPLORE INNOVATIVE APPROACHES TO MEET THEIR AFFORDABLE HOUSING NEEDS. EMBRACING THE CONCEPT OF INCLUSIVE COMMUNITIES, MUNICIPALITIES MUST TURN INCREASINGLY TO REGULATORY MECHANISMS, CONCESSIONS AND INCENTIVES — NOT PUBLIC MONIES — TO HARNESS THE PRODUCTIVE ENERGY OF THE PUBLIC SECTOR IN THE CREATION OF AFFORDABLE AND ADEQUATE HOUSING FOR ALL. RICHARD DRDLA

THE RATIONALE... J. DAVID HULCHANSKI, MCIP

Many jurisdictions throughout North America are adopting "inclusionary planning," "inclusionary zoning" and "inclusionary housing" programs. The terms come from their opposites: planning, zoning and housing regulations that *exclude* certain types of residential land uses, usually those associated with low- and moderate-income housing opportunities. This exclusionary activity translates into, and largely finds its origins in, the desire to exclude certain types of *people*. Zoning has been and continues to be used to keep ethnic minorities, lower-income households, renters and additional populations of any kind *out* of a neighbourhood.

Land use and zoning patterns are slow to reflect the changes in our society. In a period of shifting household composition, altered lifestyles and an increasingly acute need for affordable housing, zoning practices typically remain in place standing solidly as effective barriers to housing innovation. Restrictive family definitions, prohibition of accessory apartments, mandatory yard setbacks, excessive fire regulations and parking requirements are just a few of the many ways in which zoning and building regulations have been used to create and preserve privileged residential enclaves while fostering the much broader problem of an affordable housing shortage.

Exclusionary planning and zoning are polite terms for *discrimination*; they justify practices that violate the human rights of individuals and groups by keeping them out of our neighbourhoods. In only about seven decades of existence, the North American municipal planning process has produced relatively segregated neighbourhoods. And this was its aim. Although the practice is now increasingly recognized as a problem, exclusionary planning is now entrenched and sophisticated.

In addition, "planning" is still largely limited to physical land use regulation. The community-wide provision of affordable housing, for example, is not part and parcel of the overall municipal residential development process, and is not yet considered an essential element of the planning process. If it happens, it happens. If not, well, it is someone else's business.

An alternative approach to planning and the planning process — *inclusive community planning* — is proposed here. Recommendations in the *Draft Report* of Ontario's Commission on Planning and Development Reform that relate to the problems of exclusionary planning and zoning practices are also assessed.



THE EVOLUTION OF THE PLANNING SYSTEM

In Canada's larger cities, the way in which planning is approached has already gone through two distinct periods. It now needs to enter a third.

Period 1 — 1900 to the Early 1970s

From the turn of the century to the beginning of the '70s, there was no "planning." There was zoning, however,

designed and controlled by the real estate, mortgage lending and development industries. The separation of land uses by type and the separation of different classes of residential areas by housing type and tenure helped to protect property values — which was of particular interest to the mortgage lending industry. It also protected the more exclusive residential areas in our cities, ensuring that they would indeed remain "exclusive."

This kind of "planning" helped to produce our existing pattern of essentially segregated neighbourhoods. Tenants tend to be segregated from homeowners and higher- from lower-income homeowners.

Period 2 — Early 1970s to the Present

The politics of the urban reform movement has accorded more serious attention to both planning and zoning, but mainly with regard to neighbourhoods. Some municipalities are genuinely concerned about affordable housing and have been making progress. But, in general, the urban reform movement had a very limited impact on the planning process. Even a small group of organized neighbours have been "empowered" to prohibit most forms of change. The intention of this empowerment is positive — neighbourhood preservation — yet the result is most often negative — the perpetuation of residential discrimination and segregation, supported by zoning designed to keep certain people out.

The urban reform movement of the 1970s essentially gave white middle- and upper-middle-class neighbourhood groups the power to maintain their neighbourhoods as they were. This was accomplished by keeping out medium- and high-rise rental housing development and by targeting the existing detached, semi-detached and row housing stock in run-down areas for gentrification.

The reformers took planning and zoning control away from development and real estate interests, partially opening up and democratizing the local area planning process. But participation has two inherent problems: that of accountability — who is to participate? — and of focus — what issues will the participatory process address? (usually neighbourhood "protection"). As a result, the principal legacy of local area planning in the 1970s and 1980s is the entrenchment of exclusionary land use regulation in the guise of participatory neighbourhood planning.

Although the reform movement did not extend to most suburban areas, the concept of participatory neighbourhood planning as practised by the urban reformers is now being effectively applied by suburban politicians and neighbourhood organizations. "People zoning" is a common, current practice. It is not the type of land use that is being regulated but who can live in an area, and this is based on race, gender, tenure, income and disability.

To its credit, the urban reform movement did incorporate some inclusionary concepts into planning practice. Socially-mixed neighbourhoods and housing projects are now widely-recognized ideals. Such inclusionary initiatives, however, have been debased by a number of municipi-

palities. The argument for mixed communities is frequently used as a rationale for denying or obstructing approvals of housing projects for low-income residents, people with disabilities, psychiatric survivors and other disadvantaged groups. NIMBY groups take the position that there are already enough of "those kinds" of people in the community. Thus, the notions of "maximum" and "fair share" have replaced blanket exclusion as the rationale for discriminatory practices. A number of municipalities have adopted guidelines as to the *maximum* percentage allowable of social housing units — a clearly discriminatory reversal of the *minimum* percentage targets introduced by provincial policy. Is it the intention of these municipalities to set maximum percentages for the number of blacks, jews or millionaires who can live within their boundaries? When is a certain number of any group of people *too many*?

Period 3 — The Late 1980s and Early 1990s

Based on a critical understanding of the achievements and failures of the urban reform movement, and the types of objections to affordable housing projects raised publicly by municipal council members, some community-based groups and government agencies are now attempting to define a more inclusive, integrated approach to planning. Their aim is to recognize and address the issues and needs of all members of the community. The Inclusive Neighbourhoods Campaign, a community-based coalition in favour of legalizing accessory apartments in Ontario, and the Municipality of Metro Toronto's participatory process of developing a social development strategy are two recent initiatives. The Ontario government's *Land Use Planning for Housing Policy Statement*, though a cautious initiative and slow to develop, is another example.

The structure of government and the way in which it attempts to do virtually anything is a major part of this well-recognized but largely ignored problem. As Period 3 progresses, a change in the planning process will likely involve the evolution of a different kind of government. The planning bureaucracy will have to be flattened and opened up to more than just those with a financial stake or an interest in keeping others out of their neighbourhoods. The issues and concerns of more groups will have to be brought into the planning domain. Planning for the entire community will then emerge.

What is proposed here is *inclusive community planning*. Not comprehensive planning or the production of an all-encompassing master plan (a macro-planning exercise), but the inclusion of the broadest possible range of people and interests in which the regulation of physical land use is but one aspect. Inclusive planning refers to small-scale exercises aimed at a broad range of issues. It is micro-level community planning, which seeks to address issues that will eventually lead to a better place to live for all people. Inclusive community planning is proactive, not reactive. It does not neglect the need to consider issues comprehensively but arrives at planning strategies from the bottom up, with issues needing attention filtering upwards.

To many, this type of planning process may seem impossible or simple naive idealism. And, unless we change the way in which we govern ourselves, it will remain improbable. The difficulty with planning processes to date

relates to the problematic nature of our government. The broad framework of government is nominally democratic — we get to vote every four years or so. The structure of government, however, is hierarchical and virtually closed to the average citizen. The government has difficulty in identifying and addressing new issues and needs of new groups in the community. Yet any government that avoids or neglects to engage in such community interaction is in trouble. And this is why change is inevitable. We need to find processes that represent a different kind of government/population interaction; processes that are more effective than ritualistic meetings and public hearings.

Once avoided by officialdom, the term empowerment is now widely used, although it has been divested of much of its meaning. Period 3 planning — the inclusive community planning outlined here — can only happen if people and their communities are truly empowered to effectively define the nature of the planning processes in which they wish to be engaged.



THE COMMISSION ON PLANNING AND DEVELOPMENT REFORM IN ONTARIO

With the establishment of the Commission on Planning and Development Reform in July 1991, the NDP provincial government initiated an opportunity to reform planning in Ontario. Included in the very broad terms of reference was permission to "expand the terms of reference to cover any matter that they deem necessary." In December 1992, the Commission released its *Draft Report* and presented its "proposals for an improved planning system."

Is the Commission, at the completion of this 15-month participatory process, recommending changes that will help lead Ontario into Period 3? Unfortunately not. The Commission is rooted in Period 2, and its recommendations are aimed at the Period 2 planning process.

As the *Draft Report* notes, "We decided early on that our key task was to find common ground among the various key players involved in planning," those people "across the province who work with the planning process on a daily basis." Further, the Commission concludes that no new research was required: "Since there was already a large amount of research to draw on, we agreed we had little need for independent research" (p. 1). This is an unusual decision for a commission with a mandate to recommend "reform;" a mandate "to consult widely, undertake research, foster dialogue." By placing these limitations on itself, the Commission is, itself, an example of the current exclusionary nature of planning in Ontario. And, as a result, its *Draft Report* contributes little in terms of describing a more inclusive community planning process.

Rather than a different kind of government, the *Draft Report* proposes more government. Essentially, planning is still really government land use regulation, and the "key players" remain unchanged. The *Draft Report* does, however, recommend greater respect for the environmental impacts of land development and rural land use issues. These are both important, and its contribution to land use

regulation reform relating to these two issues may indeed be valuable. But why are these two issues included while others are not?

One of the Commission's recommendations is that the *Planning Act* should include a new "purpose" section. The second purpose would be "to foster economic, cultural, physical and social well-being" (p. 8). But what are the Commission's recommendations toward the achievement of economic, cultural, physical and social well-being? Very little, it seems. These terms are not defined. There is nothing explicitly "social" — social planning or human and social development — in the recommendations.

The Commission further recommends that the Province "develop a comprehensive set of provincial policies," including one on "Community Development and Infrastructure Policies." In this proposed policy, "social needs will be identified and addressed by the provision of a fair distribution of facilities and programs available to residents diverse in ability, age, income and culture" (p. 26). What exactly does this mean? All we are told is that these provincial policy statements "should be clear, understandable, comprehensive and as brief as possible" (p. 22). But is this really possible? Clearly, the Commission is passing the buck. If a commission mandated to reform planning does not draft proposals for reforming planning policies, then who will? And by what process? Politicians or civil servants confined to their offices? Or must the provincial government now repeat the long consultation process the Commission has just completed?

What recommendations does the Commission make about housing? The section on housing policies (p. 28) contains three inclusive housing strategies. These are, however, little more than a restatement of existing provincial initiatives (the *Land Use Planning for Housing Policy Statement* and the decision to legalize accessory apartments). There is nothing new in their recommendations. There is no new contribution to housing — the land use category that accounts for the largest portion of land in our cities and generates the most conflict. Even if planning is to be limited to physical land use planning, surely housing must be one of its substantial components?

The Commission makes no mention of the use of planning and zoning to discriminate against the disadvantaged despite more than a decade of NIMBY opposition to all types of housing proposals. The provincial government is now aware of the problem. Why, then, does a provincial commission on planning and development reform fail to recognize and make recommendations regarding an issue that many see as the major community planning problem of the decade?

TOWARDS INCLUSIVE COMMUNITY PLANNING

What is the solution? How can Ontario, or any other province, initiate inclusive community planning? The tasks fall into three categories: prohibiting exclusionary practices; in-

roducing a more inclusive *mandate* for planning; and initiating a more dynamic inclusive *process*.

Prohibiting Exclusionary Practices

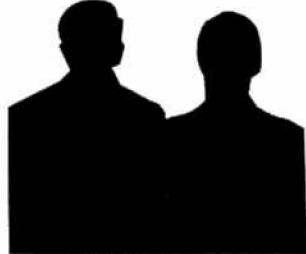
Exclusionary practices will continue until human rights are recognized and respected. Ontario's planning system still allows local municipal officials and organized groups to prohibit certain groups from moving into certain neighbourhoods. Often, communities are explicit in their discrimination at public meetings — they do not want immigrants, the poor, tenants, single mothers or special needs groups in their neighbourhoods. Most of the time, however, their objectives are dressed up in land use planning jargon.

Municipalities must begin to zone land for all types of housing with the most highly segregated communities actively seeking a better balance. Since human rights protection is the responsibility of senior levels of government, the mandate for this must come from the top. Human rights enforcement is not optional. Its definition is not the responsibility of municipal governments. The solution to any form of covert discrimination lies in recognizing it for what it is — a violation of fundamental human rights.

The provincial government must amend the *Human Rights Code* and the *Planning Act* to explicitly prohibit "people zoning." In the meantime, provincial ministers responsible for municipal affairs, housing and human rights must speak out and condemn any attempts to practise exclusionary zoning. A social learning process must take place, but it will only do so if the province forces the issue.

Excluding a member of a disadvantaged group from a community on the basis of an "ideal" maximum number or percentage is contrary to human rights legislation and the *Charter of Rights and Freedoms*. In 1990, the Manitoba Court of Appeal ruled that distancing requirements imposed on housing for the aged, for persons with disabilities, for inmates on parole and for persons recovering from addictions violated the equality provisions of the *Charter of Rights*. In *Heather Sinclair v. Peel Non-Profit Housing Corp.*, the Ontario Human Rights Commission took the position that denying a social assistance recipient access to a market rent unit on the basis of income mix policy is a violation of the *Human Rights Code*. And on March 2, 1993, the Nova Scotia Court of Appeal ruled that residents of public housing are a disadvantaged group protected by the *Charter of Rights*, paving the way for challenges under the *Charter* against any municipality restricting the amount of social housing in its jurisdiction.

While present-day zoning is not based explicitly on race, ethnicity, gender or disability, the effect of exclusionary zoning and planning policies is to violate human rights. The courts have ruled that discrimination occurs even where there is no intent to discriminate; that even an apparently neutral policy can have an "adverse effect on" or "constructively discriminate against" disadvantaged groups. Restrictions imposed on social housing, accessory apartments and special needs housing are equally discriminatory. It is this kind of housing that disadvantaged groups rely on most. Excluding or limiting any of these housing types "constructively" discriminates against those dependent upon it.



Introducing a More Inclusive Mandate for Planning

The planning mandate must be broadened beyond regulation of physical land use, and planning bureaucracies in our municipal, regional and provincial governments must equally serve all members and facets of our communities. This means instituting what is currently referred to as "social planning" or "human and social development planning." These terms and the process must be defined.

Some success outside the efforts of the Commission has been achieved. In its recently released report *Our Environment, Our Health* (January 1993), the Ontario Premier's Council on Health, Well-being and Social Justice recommends that the provincial government "immediately begin integrating human service planning and land use planning to promote the development of communities that recognize the relationship between the physical environment and the human environment" (p. 40).

This appears as "Target 1" in the section of the report that deals with Healthy Communities. Eight specific "actions" are recommended. The first is to "revise the *Planning Act*, provincial policy statements and guidelines to specifically require integrated human services planning and land use planning" (p. 44). Another healthy community target is to "immediately promote public awareness and involvement in the planning and design of healthy communities" (p. 40). As well, the report states that "to integrate human services and land use planning, Ontario must support multi-sectoral ... initiatives and encourage active citizen participation" (p. 43).

The Premier's Council's definition of a "healthy community" is adopted from the World Health Organization. For the purposes of inclusive community planning, it is certainly an adequate starting-point. According to the report, a healthy community is one "that is continually creating and improving those community resources which enable people to mutually support each other in performing all the functions of life and in developing to their maximum potential" (p. 41).

The Metropolitan Toronto municipal government has also made a contribution toward defining inclusive community planning. In *New Realities, New Directions: A Social Development Strategy for Metropolitan Toronto* (December 1991), the municipality puts forward its social development strategy. The document is an excellent initial attempt at defining a social development strategy and a social planning process, and identifies seven social development principles and a rationalization for how these can operate as a central component of an inclusive community planning process.

In addition, at least three major land use planning documents under the existing *Planning Act* embrace aspects of human and social development in an effort to be more inclusive. These are: *The Livable Metropolis: Draft Official Plan*, The Municipality of Metropolitan Toronto, September 1992; *Draft New Regional Plan: Official Plan for the Halton Planning Area*, Regional Municipality of Halton, February 1993; and *Planning for People and Communities: Report of the Provincial-Municipal Human and Social Development Working Group*, Greater Toronto Area Co-ordinating Committee, 1992. Clearly, there is a wealth of excellent case study material to draw on in our move toward more inclusive community planning.

Initiating a More Dynamic Inclusive Process

Who is usually at the table when important planning decisions are being made? How often are the official, mandated, government-sponsored and -managed "public participation processes" little more than formalistic rituals?

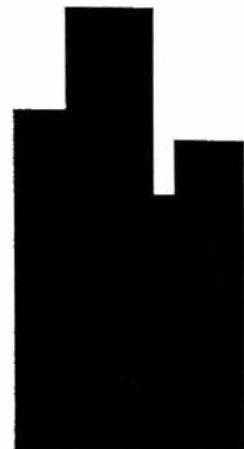
There has been limited opportunity for people other than those with an immediate financial or neighbourhood "protection" stake to influence the planning process, the nature of the issues planning addresses and the ultimate planning decisions.

There has been a dramatic change in the ethnic mix of Ontario's, and particularly Metro Toronto's, population. Roughly one-third of Metro Toronto's population is now composed of visible minorities, and this will increase to about 45 percent over the next 10 years. How are these people — their issues and their problems — recognized in the current or proposed *Planning Act*? What about the needs of the annual influx of immigrants and refugees? Ontario includes some 37 percent of the country's population and receives about 55 percent of all immigrants and refugees coming to Canada (120,000 people in 1991). The greater Toronto area, home to about 13 percent of the nation's population, receives roughly 33 percent of all Canada's immigrants and refugees.

There must be greater diversity in the individuals and groups included in Ontario's municipal and regional planning process; a process that must be dynamic, on-going and community-oriented. The goal must be open-ended and broadly defined — inclusive — not just a plan or a response to a development proposal.

A FINAL HOUSING QUESTION — WHY?

After 70 years of various planning processes and 60 years of housing policy and programs, Canada, and more specifically Ontario — as affluent as they are — cannot adequately provide housing for all. Although there are more factors involved than a failure of the community planning system and of housing policy, these two are key elements in our failure. They are also critical components of progress in this area. Unfortunately, the Commission on Planning and Development Reform in Ontario contributes little to an improved approach to planning. Its *Draft Report* is silent on the issue of exclusionary planning practices, and yet an end to exclusionary land use regulation is essential if we are to move into a new and more inclusive period in the evolution of planning. ♦



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